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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,155	01/09/2004	John W. McMullen	CUSTB 63550	7513

24201 7590 08/25/2006

FULWIDER PATTON  
6060 CENTER DRIVE  
10TH FLOOR  
LOS ANGELES, CA 90045

EXAMINER
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SHAH, AMEE A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/754,155

Applicant(s)

MCMULLEN ET AL.

Examiner

Amee A. Shah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-23, 25-41 and 43-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-23, 25-41 and 43-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-16, 18-23, 25-41 and 43-46 are pending in this action.

#### ***Response to Amendment***

Applicant's Amendment, filed June 19, 2006, has been entered. Claims 1, 18, 19, 22, 27 and 44 have been amended. Claims 17, 24 and 42 have been cancelled. The revised drawings are accepted and the objections to the drawings are withdrawn.

#### ***Response to Arguments***

Applicant's arguments filed June 19, 2006, have been fully considered but they are not persuasive. Applicant essentially incorporates the limitations of cancelled claims 17, 24 and 42, i.e. that the project is installing tile or stone and the particular phases of the project, into claims 1, 22 and 27. While the Examiner did state that the prior art Deal, US 2005/0044011 A1, did not disclose the limitations of claims 17, 24 and 42, the Examiner rejected those claims on the basis of obviousness over Lowes.com. The Applicant has presented no arguments traversing this rejection. Applicant merely states that Deal in view of lowes.com fails to teach, disclose or suggest the limitations (Remarks, pages 14-15), but these arguments fail to comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. The Examiner maintains that lowes.com teaches, discloses or suggests these limitations, as discussed in the prior Office Action and below.

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***Examiner Note***

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. §103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1-6, 12-14, 16, 18-21, 27-32, 36, 38-41 and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Deal, US 2005/0044011 A1 (hereinafter referred to as “Deal”) in view of [www.Lowes.com](http://www.Lowes.com), archived at [web.archive.org](http://web.archive.org) and dated Nov. 25, 2002 (hereinafter referred to as “Lowes.com”).**

Referring to claim 1. Deal discloses a system for selling products in a home improvement or commercial construction store, comprising:

- an interactive display for disseminating information in response to requests by a user, the information including information regarding phases of a project and information regarding the seller's products adapted for use in performing phases of the project (page 2, ¶0020); and
- a visual display of the seller's products adapted for use in performing phases of the project, the products grouped on a plurality of shelves of the store according to the corresponding phase of the project for which the seller's products are adapted and having indicia for identifying the seller's products with the corresponding phase of the project (pages 2-3, ¶¶0023-0024 and 0034 – note the shelves and indicia are the graphical representation of store displays and products);
- wherein the information disseminated by the interactive display is coordinated with the grouping of the seller's products on the shelves of the store and the indicia to facilitate selection and use of the seller's products for performing the corresponding phases of the project (page 2, ¶0025 – note the coordination is the aiding in location).

Deal discloses the system of claim 1, as discussed above, but does not specifically disclose wherein the project is installing tile or stone and the phases of the project include preparing the area, setting the tile or stone, grouting the tile or stone and maintaining the installed

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tile or stone. However, this difference is only found in the nonfunctional descriptive material and is not functionally involved in the disseminating information structure/step recited. The dissemination of information in response to requests by a user would be performed in the same manner and of which the structure would be capable regardless of whether the information includes project information, product information or particular phases of a project. Thus, the non-functional descriptive material will not distinguish the claimed invention from the prior art Wilmott et al. in terms of patentability. *See In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowrey*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Furthermore, however, Lowes.com, in the same field of endeavor of e-shopping, discloses a system for buying home improvement tools and services online, including providing instructions on performing home improvement projects including installing tile or stone with the phases involved (see pages 4-16).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Deal include the teachings of lowes.com to allow for the project to be installing tile or stone with the phases of the project in order for customers to locate materials and tools necessary for installing tile or stone, as suggested by lowes.com.

Referring to claim 2. Deal in view of Lowes.com further discloses the system of claim 1 wherein the information disseminated directs the user to the location of the seller's products on the shelves of the store (Deal, page 2, ¶0025).

Referring to claim 3. Deal in view of Lowes.com further discloses the system of claim 1 wherein the interactive display comprises a keyboard or keypad (Deal, page 3, ¶0041)

Referring to claim 4. Deal in view of Lowes.com further discloses the system of claim 1 wherein the interactive display comprises a touch sensitive screen (Deal, page 3, ¶0040).

Referring to claim 5. Deal in view of Lowes.com further discloses the system of claim 1 wherein the interactive display is in a kiosk (Deal, pages 2-3, ¶0031).

Referring to claim 6. Deal in view of Lowes.com also discloses the system of claim 1 further comprising a printer (Deal, page 3, ¶0042).

Referring to claims 12, 13 and 14. Deal in view of Lowes.com discloses the system of claim 1, as discussed above, but does not expressly show wherein the indicia comprises either color coding the seller's products, number coding the seller's products, or visual representations such as shapes or designs.

As analyzed above, Deal shows having indicia for identifying the seller's products with the corresponding phase of the project, but does not disclose the indicia specifically being color coding, number coding or shapes or designs. However, these differences are only found in the nonfunctional descriptive material and do not alter the visual display functionality (i.e. the descriptive material does not alter the structure of a display). Thus, the descriptive material will not distinguish the claimed inventions from the prior art in terms of patentability. *See In re*

*Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowrey*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to mark the products with indicia that can be color coding the seller's products, number coding the seller's products, or visual representations such as shapes or designs, because such indicia does not alter the display and also because the subjective interpretation of the information does not patentably distinguish the claimed invention.

Referring to claim 16. Deal in view of Lowes.com also discloses the system of claim 1 further comprising a remote server that provides access to the interactive display from a home computer accessed via the Internet (Deal, pages 2-3, ¶¶ 0027, 0028 and 0032).

Referring to claims 18. Deal in view of lowes.com discloses the system of claim 1, as discusses above, wherein the information disseminated includes information regarding the types of tile and stone available and the products and tools required for performing the phases of the project for the different types of tile and stone (lowes.com, pages 4-16) so that customers are better able to locate the products and tools necessary for the project.

Referring to claim 19. Deal in view of lowes.com discloses the system of claim 1, as discussed above, wherein the information disseminated includes descriptions of tools and products provided by the seller and adapted for performing specific phases of the project for a



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specific type of tile or stone in a specific environment (lowes.com, pages 4-16) so that customers are better able to locate the products and tools necessary for the project.

Referring to claims 20 and 21. Deal in view of lowes.com discloses the system of claim 19, as discussed above, but does not specifically disclose wherein the environment is indoors or outdoors. However, this difference is only found in the nonfunctional descriptive material and do not alter the functionality of the interactive display that disseminates information (i.e. the descriptive material does not alter the structure of the display). Thus, the descriptive material will not distinguish the claimed inventions from the prior art in terms of patentability. *See In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowrey*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to allow for the information on the project to encompass any environment, because such information does not alter the display and also because the subjective interpretation of the information does not patentably distinguish the claimed invention.

Referring to claims 27, 29, 31, 32, 36, 38-41 and 43. The limitations of claims 27, 29, 31, 32, 36, 38-41 and 43 are closely parallel to the limitations of claims 1, 5, 6, 12-14, 16 and 18, analyzed above, and are rejected on the same bases.

Referring to claim 28. Deal discloses the method of claim 27, as discussed above, but does not disclose further comprising providing the seller's products adapted to perform all phases

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of the home improvement or commercial construction project from inception to completion.

Lowes.com, in the same field of endeavor of e-shopping, discloses a system for buying home improvement tools and services online, including providing the seller's products adapted to perform all phases of the home improvement or commercial construction project from inception to completion (pages 1-5).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Deal include the teachings of lowes.com to allow for the providing the seller's products adapted to perform all phases of the home improvement or commercial construction project from inception to completion in order for customers to more easily locate materials and tools necessary for installing tile or stone, increasing the possibility of purchases made from the seller.

Referring to claim 30. Deal discloses the method of claim 29, as discussed above, whereby the interactive display is located in a kiosk, but does not explicitly disclose further comprising providing some of the seller's products in the kiosk. However, this difference is only found in the nonfunctional descriptive material and does not alter the step of providing some of seller's products, whether located adjacent to or within the kiosk. Thus, the descriptive material will not distinguish the claimed inventions from the prior art in terms of patentability. *See In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowrey*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time to provide some of the seller's products in the kiosk for added convenience to the customer,

more aggressive marketing, and also because the subjective interpretation of the information does not patentably distinguish the claimed invention.

**Claims 7, 8, 15, 22 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deal in view of lowes.com and further in view of Gupta et al., US Pat. No. 6,820,062 B1 (hereinafter referred to as "Gupta et al.").**

Referring to claims 7 and 8. Deal in view of Lowes.com discloses the system of claim 1, as discussed above, but does not disclose wherein the interactive display provides a selection of a language in which information is disseminated, nor wherein the information disseminated includes both video and textual information. Gupta et al., in the same field of endeavor of e-shopping, discloses a system and method for graphically locating merchandise comprising in part an interactive display that provides a selection of language in which to disseminate the information and that disseminates both video and textual information (col. 5, lines 23-25, col. 7, lines 44-51, and col. 8, lines 12-14).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Deal in view of Lowes.com include the teachings of Gupta et al. to allow for the interactive display to provide a selection of languages in which to disseminate information and to disseminate both video and textual information. Doing so would allow for a better informed shopper, for example one for whom English is not the first language or one who understands better with visual graphics rather than text, thereby increasing the likelihood that he/she will make a purchase, as suggested by Gupta et al. (col. 1, lines 66-67 and col. 8, lines 12-14).

Referring to claim 15. Deal in view of Lowes.com discloses the system of claim 1, as discussed above, but does not disclose wherein the interactive display provides a means for tracking usage of the interactive display. Gupta et al., in the same field of endeavor of e-shopping, discloses a system and method for graphically locating merchandise comprising in part an interactive display that provides a means for tracking usage of the interactive display (col. 8, lines 52-65).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Deal in view of Lowes.com include the teachings of Gupta et al. to allow for the interactive display to provide a means for tracking usage of the interactive display. Doing so would allow for a seller to better understand shoppers' preferences and habits, allowing them to make improvement to their stores and increase profit, as suggested by Gupta et al. (col. 8, line 66 through col. 9, line 6).

Referring to claim 22. The limitations of claims 22-26 are closely parallel to the limitations of claims 1, 2, 4 and 6-8 analyzed above, and are rejected on the same bases.

Referring to claim 37. The limitations of claim 37 are closely parallel to the limitations of claim 15, analyzed above, and are rejected on the same bases.

**Claims 9-11 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deal in view of Lowes.com and further in view of Heisler et al., US Pat. App. Pub. No. 2001/0044749 A1 (hereinafter referred to as "Heisler et al.").**

Referring to claims 9 and 11. Deal in view of Lowes.com discloses the system of claim 1, as discussed above, but does not disclose wherein the information disseminated includes description of tools and products provided by the seller and adapted for performing specific phases of the project and instructional presentations regarding how to perform a specific phase of the project. Heisler et al., in the same field of endeavor of e-shopping, discloses a method and system for the complete design and identification of materials and tools for home improvement projects, including disseminating descriptions of tools and products available from the seller for use in specific phases of the project and instructional presentations regarding how to perform a specific phase of the project (page 2, ¶0021).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Deal in view of Lowes.com include the teachings of Heisler et al. to allow for the dissemination of a description of tools and products provided by the seller and adapted for performing specific phases of the project and instructional presentations regarding how to perform a specific phase of the project. Doing so would allow businesses to better market certain goods and would provide the customer knowledge to allow for the customer to perform the project more quickly and successfully.

Referring to claim 10. Deal in view of Lowes.com discloses the system of claim 1, as discussed above, but does not disclose wherein the interactive display provides a means for estimating quantities of particular ones of the seller's products that are needed for performing a specific phase of the project based upon information provided by the user. Heisler et al., in the same field of endeavor of e-shopping, discloses a method and system for the complete design

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and identification of materials and tools for home improvement projects including means for estimating quantities of a particular product of seller's that is needed for performing a specific phase of the project, based upon information provided by the user (pages 3-4, ¶0032).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Deal include the teachings of Heisler et al. to allow for means for estimating quantities of particular ones of the seller's products that are needed for performing a specific phase of the project based upon information provided by the user. Doing so would increase the efficiency of a customer's project by reducing the number of trips made to a store because of guesses about quantities, as explicitly suggested by Heisler et al. (page 1, ¶0006).

Referring to claims 33-35. The limitations of claims 33-35 are closely parallel to the limitations of claims 9-11, analyzed above, and are rejected on the same bases.

**Claims 23, 25, 26 and 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deal in view of Lowes.com, further in view of Gupta et al., and further in view of Heisler et al.**

Referring to claims 23, 25, 26 and 44-46. The limitations of claim 23, 25, 26 and 44-46 are closely parallel to the limitations of 1, 2, 4-8, 10, 16, 18 and 19, analyzed above, and are rejected on the same bases.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

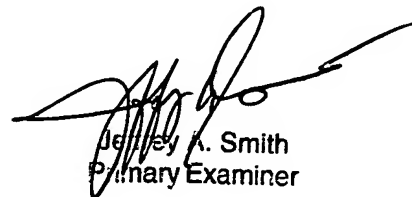
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ameer A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

August 18, 2006



Jeffrey A. Smith  
Primary Examiner